

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**CIVIL MINUTES - GENERAL**

Case No. 2:23-cv-03929-FWS (SK)

Date July 19, 2023

Title Kurtis King v. People of The State of California

Present: The Honorable Steve Kim, United States Magistrate JudgeConnie Chungn/aDeputy ClerkCourt Smart / Recorder

Attorneys Present for Petitioner:

None present

Attorneys Present for Respondent:

None present

Proceedings: (IN CHAMBERS) SECOND ORDER TO SHOW CAUSE

In June 2023, the Court ordered Petitioner to show cause why his 28 U.S.C. § 2254 habeas petition should not be dismissed for lack of exhaustion as a mixed petition. (ECF 4). In response, Petitioner admitted he has not exhausted his ineffective assistance of counsel claim in state court because he believed he would not receive a fair review. (ECF 6 at 1–2). But his belief that the state courts somehow impeded his ability seek justice does not excuse his failure to exhaust the claim he now seeks to bring in federal court. (*Id.* at 5). Indeed, this Court has no discretion to consider an unexhausted claim on habeas review. *See Rose v. Lundy*, 455 U.S. 509, 510 (1982). So long as both his claims are joined in the same federal petition, the unexhausted claim makes the entire petition “mixed” and subject to dismissal. *See* 28 U.S.C. § 2254(b)(1)(A); *Rose*, 455 U.S. at 518–19 (1982); *see also Rhines v. Weber*, 544 U.S. 269, 274–75 (2005).

For these reasons, on or before **Wednesday, August 16, 2023**, Petitioner must exercise one of two options and inform the Court accordingly:

1. File an amended petition that deletes his unexhausted claim. *See Butler v. Long*, 752 F.3d 1177, 1180 (9th Cir. 2014). The First Amended Petition must be complete in itself without reference to the original petition.

or

2. Voluntarily dismiss the petition (using attached Form CV-09) and refile after he has exhausted all his claims, provided the statute of limitations under 28 U.S.C. § 2244(d) has not lapsed.

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If Petitioner does not comply with this Order, the Court will recommend involuntary dismissal of the petition for failure to prosecute or obey court orders.
See Fed. R. Civ. P. 41(b); L.R. 41-1.

IT IS SO ORDERED.